

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

<p>Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)</p>		
<p>Applicant's or agent's file reference see form PCT/ISA/220</p>		<p><b>FOR FURTHER ACTION</b> See paragraph 2 below</p>
International application No. PCT/GB2005/001018	International filing date (day/month/year) 18.03.2005	Priority date (day/month/year) 19.03.2004
<p>International Patent Classification (IPC) or both national classification and IPC A61K31/5513</p>		
<p>Applicant ARROW THERAPEUTICS LIMITED</p>		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b/s(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx. 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Goetz, G Telephone No. +49 89 2399-8105
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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/GB2005/001018

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**Box No. I Basis of the opinion**

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1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:  
 a sequence listing  
 table(s) related to the sequence listing
  - b. format of material:  
 in written format  
 in computer readable form
  - c. time of filing/furnishing:  
 contained in the international application as filed.  
 filed together with the international application in computer readable form.  
 furnished subsequently to this Authority for the purposes of search.
3.  In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

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The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,  
 claims Nos. 36

because:

- the said international application, or the said claims Nos. 36 relate to the following subject matter which does not require an international preliminary examination (*specify*):

**see separate sheet**

- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):  
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.  
 no international search report has been established for the whole application or for said claims Nos.  
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

- has not been furnished

- does not comply with the standard

the computer readable form

- has not been furnished

- does not comply with the standard

- the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

- See separate sheet for further details

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or  
industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes:	Claims	1-38
	No:	Claims	
Inventive step (IS)	Yes:	Claims	1-38
	No:	Claims	
Industrial applicability (IA)	Yes:	Claims	1-35,37-38
	No:	Claims	

**2. Citations and explanations**

**see separate sheet**

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB2005/001018

- D1: EP-A-0 491 218 (F. HOFFMANN-LA ROCHE AG) 24 June 1992 (1992-06-24)  
D2: WO 03/053344 A (BRISTOL-MYERS SQUIBB COMPANY) 3 July 2003 (2003-07-03)

1. For the assessment of the present claim 36 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Claim 36 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of this claim (Article 34(4)(a)(I) PCT).

- 2.1. None of the prior art documents discloses a pharmaceutical composition comprising: an "inhibitor of the RSV fusion protein" and a benzodiazepine derivative.

Furthermore, D1 discloses benzodiazepines which are structurally different from the compounds according to present claim 2, no pharmaceutical composition comprising (a) and (b) of claim 1 is disclosed.

D2 discloses "inhibitors of the RSV fusion protein" according to compounds (a) of claim 1; no pharmaceutical composition comprising (a) and (b) of claim 1 is disclosed.

The subject matter of present claims 1 to 38 is thus novel over said prior art (Article 33.2 PCT).

- 2.2. In view of D2 the underlying problem can be defined by the provision of a pharmaceutical composition useful in the treatment of RSV infection. The solution is represented by the pharmaceutical composition comprising the

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compounds (a) and (b).

This solution is considered to be based on an inventive step:

The prior art does not disclose benzodiazepines which are used in the treatment of RSV infection. In particular the compounds according to present formula (V) of claim 2 are not disclosed in any of the prior art documents.

There is thus no information nor hint to be found in the prior art that benzodiazepines can be used in the treatment of RSV infection. Any pharmaceutical composition comprising a benzodiazepine together with an "inhibitor of the RSV fusion protein" is thus not rendered obvious from the prior art.

The subject matter of present claims 1 to 38 is thus based on an inventive step having regard to said prior art (Article 33.3 PCT).

2.3 Industrial applicability is given for claims 1 to 35 and 37 to 38 (Article 33.4 PCT).